

UNITED STATES TAX COURT
WASHINGTON, DC 20217

CMS

JERALD E. SARK,)
)
Petitioner,)
)
v.) Docket No. 20861-14
)
COMMISSIONER OF INTERNAL REVENUE,)
)
Respondent.)

ORDER OF DISMISSAL AND DECISION

This case for the redetermination of a deficiency is before the Court on respondent's Motion to Dismiss for Failure to State a Claim upon which Relief Can Be Granted, filed October 14, 2014. We consider respondent's motion against the allegations and statements contained in the amended petition, filed December 15, 2014. In so doing, and for the following reasons, we find the motion to be well made.

In a notice of deficiency dated August 4, 2014 (notice), respondent determined a deficiency in, and imposed additions to tax with respect to petitioner's 2011 Federal income tax. According to the notice, petitioner received "Nonemployee Compensation" during 2011, but failed to file a 2011 Federal income tax return reporting that income. These points are not disputed by petitioner in the petition, amended petition, or in anything else he has submitted. Instead, in page after page of frivolous assertions, petitioner, who was living in Texas when the petition was filed, insists that he is not subject to Federal income taxation or otherwise obligated to have filed a 2011 Federal income tax return. Given the amount of income attributed to him in the notice, he is mistaken on both points, see secs. 61(a)(1), 6012;¹ Parker v. Commissioner, 117 F.3d 785 (5th Cir. 1997); United States v. Romero, 640 F.2d 1014, 1016 (9th Cir. 1981); White v. Commissioner, T.C. Memo. 1997-459, and nothing else needs to be said in that regard. See Crain v. Commissioner, 737 F.2d 1417 (5th Cir. 1984).

¹Section references are to the Internal Revenue Code of 1986, as amended. Rule references are to the Tax Court Rules of Practice and Procedure, available on the Internet at www.ustaxcourt.gov.

We further note that nothing in the petition, amended petition or anything else submitted by petitioner suggests that the deficiency is overstated because petitioner is entitled to deductions not taken into account in the notice. And to the extent that anything submitted by petitioner explains his failure to file a 2011 Federal income tax return, the explanation hardly constitutes reasonable cause. See Swain v. Commissioner, 118 T.C. 358, 364-365 (2002).

Rule 34(b)(4) requires that a petition filed in this Court contain clear and concise assignments of each and every error that the taxpayer alleges to have been committed by the Commissioner in the determination of the deficiency and the additions to tax in dispute. Rule 34(b)(5) further requires that the petition contain clear and concise lettered statements of the facts on which the taxpayer bases the assignments of error. See Jarvis v. Commissioner, 78 T.C. 646, 658 (1982). Neither the petition nor the amended petition satisfies these pleading requirements.

Because the allegations and statements contained in the amended petition fail to give rise to any judicable issue, respondent's motion will be granted. See Scherping v. Commissioner, 747 F.2d 478 (8th Cir. 1984); Rules 34(a)(1), 123(b); see also Carter v. Commissioner, 784 F.2d 1006, 1009 (9th Cir. 1986). Continuing to advance frivolous positions in this case in response to this Order of Dismissal and Decision, or advancing frivolous positions in other cases before this Court could subject petitioner to a penalty of up to \$25,000. See sec. 6673(a).

Premises considered, it is

ORDERED that respondent's motion is granted, and this case is dismissed upon the ground the amended petition fails to state a claim upon which relief can be granted. It is further

ORDERED AND DECIDED that for 2011, there is a \$2,770 deficiency in petitioner's Federal income tax,

that petitioner is liable for a \$623.25 section 6651(a)(1) addition to tax, and

that petitioner is liable for a \$360.10 section 6651(a)(2) addition to tax.

(Signed) Lewis R. Carluzzo
Special Trial Judge

ENTERED: **JAN 28 2015**